

Pension Benefit Guaranty Corporation

§ 4207.2

determined under the preceding sections of this part by a fraction—

(1) The numerator of which is the excess of the total partial withdrawal liability of the employer for all partial withdrawals in prior years (excluding those partial withdrawals for which the credit is zero) over the present value of each abatement or other reduction of that prior withdrawal liability calculated as of the date on which that prior partial withdrawal liability was determined; and

(2) The denominator of which is the total partial withdrawal liability of the employer for all partial withdrawals in prior years (excluding those partial withdrawals for which the credit is zero).

§ 4206.9 Amount of credit in plans using alternative allocation methods.

A plan that has adopted an alternative method of allocating unfunded vested benefits pursuant to section 4211(c)(5) of ERISA and part 4211 of this chapter shall adopt, by plan amendment, a method of calculating the credit provided by § 4206.3 that is consistent with the rules in §§ 4206.4 through 4206.8 for plans using the statutory allocation method most similar to the plan's alternative allocation method.

§ 4206.10 Special rule for 70-percent decline partial withdrawals.

For the purposes of applying the rules in §§ 4206.4 through 4206.9 in any case in which either the prior or subsequent partial withdrawal resulted from a 70-percent contribution decline (or a 35-percent decline in the case of certain retail food industry plans), the first year of the 3-year testing period shall be deemed to be the plan year in which the partial withdrawal occurred.

PART 4207—REDUCTION OR WAIVER OF COMPLETE WITHDRAWAL LIABILITY

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§ 4207.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to prescribe rules, pursuant to section 4207(a) of ERISA, for reducing or waiving the withdrawal liability of certain employers that have completely withdrawn from a multiemployer plan and subsequently resume covered operations under the plan. This part prescribes rules pursuant to which the plan must waive the employer's obligation to make future liability payments with respect to its complete withdrawal and must calculate the amount of the employer's liability for a partial or complete withdrawal from the plan after its reentry into the plan. This part also provides procedures, pursuant to section 4207(b) of ERISA, for plan sponsors of multiemployer plans to apply to PBGC for approval of plan amendments that provide for the reduction or waiver of complete withdrawal liability under conditions other than those specified in section 4207(a) of ERISA and this part.

(b) *Scope.* This part applies to multiemployer plans covered under title IV of ERISA, and to employers that have completely withdrawn from such plans after September 25, 1980, and that have not, as of the date of their reentry into the plan, fully satisfied their obligation to pay withdrawal liability arising from the complete withdrawal.

§ 4207.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: employer, ERISA, IRS, Multiemployer Act, multiemployer plan, nonforfeitable benefit, PBGC, plan, and plan year.

In addition, for purposes of this part:

Complete withdrawal means a complete withdrawal as described in section 4203 of ERISA.

Eligible employer means the employer, as defined in section 4001(b) of ERISA, as it existed on the date of its initial partial or complete withdrawal, as applicable. An eligible employer shall continue to be an eligible employer notwithstanding the occurrence of any of the following events:

- (1) A restoration involving a mere change in identity, form or place of organization, however effected;
- (2) A reorganization involving a liquidation into a parent corporation;
- (3) A merger, consolidation or division solely between (or among) trades or businesses (whether or not incorporated) of the employer; or
- (4) An acquisition by or of, or a merger or combination with another trade or business.

Partial withdrawal means a partial withdrawal as described in section 4205 of ERISA.

Period of withdrawal means the plan year in which the employer completely withdrew from the plan, the plan year in which the employer reentered the plan and all intervening plan years.

§ 4207.3 Abatement.

(a) *General.* Whenever an eligible employer that has completely withdrawn from a multiemployer plan reenters the plan, it may apply to the plan for abatement of its complete withdrawal liability. Applications shall be filed by the date of the first scheduled withdrawal liability payment falling due after the employer resumes covered operations or, if later, the fifteenth calendar day after the employer resumes covered operations. Applications shall identify the eligible employer, the withdrawn employer, if different, the date of withdrawal, and the date of resumption of covered operations. Upon receiving an application for abatement, the plan sponsor shall determine, in accordance with paragraph (b) of this section, whether the employer satisfies the requirements for abatement of its complete withdrawal liability under § 4207.5, § 4207.9, or a plan amendment which has been approved by PBGC pursuant to § 4207.10. If the plan sponsor determines that the employer satisfies the requirements for abatement of its complete withdrawal liability, the provisions of paragraph (c) of this section

shall apply. If the plan sponsor determines that the employer does not satisfy the requirements for abatement of its complete withdrawal liability, the provisions of paragraphs (d) and (e) of this section shall apply.

(b) *Determination of abatement.* As soon as practicable after an eligible employer that completely withdrew from a multiemployer plan applies for abatement, the plan sponsor shall determine whether the employer satisfies the requirements for abatement of its complete withdrawal liability under this part and shall notify the employer in writing of its determination and of the consequences of its determination, as described in paragraphs (c) or (d) and (e) of this section, as appropriate. If a bond or escrow has been provided to the plan under § 4207.4, the plan sponsor shall send a copy of the notice to the bonding or escrow agent.

(c) *Effects of abatement.* If the plan sponsor determines that the employer satisfies the requirements for abatement of its complete withdrawal liability under this part, then—

- (1) The employer shall have no obligation to make future withdrawal liability payments to the plan with respect to its complete withdrawal;
- (2) The employer's liability for a subsequent withdrawal shall be determined in accordance with § 4207.7 or § 4207.8, as applicable;

(3) Any bonds furnished under § 4207.4 shall be cancelled and any amounts held in escrow under § 4207.4 shall be refunded to the employer; and

(4) Any withdrawal liability payments due after the reentry and made by the employer to the plan shall be refunded by the plan without interest.

(d) *Effects of non-abatement.* If the plan sponsor determines that the employer does not satisfy the requirements for abatement of its complete withdrawal liability under this part, then—

(1) The bond or escrow furnished under § 4207.4 shall be paid to the plan within 30 days after the date of the plan sponsor's notice under paragraph (b) of this section;

(2) The employer shall pay to the plan within 30 days after the date of the plan sponsor's notice under paragraph (b) of this section, the amount of